

DIVISION OF HEALTH
REGULATIONS:

The Division of Health is authorized to make a regulation with respect to the length of vents for gas heaters in a tourist cabin.

December 1, 1958



Hon. Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I would like to have an opinion from your office concerning the validity and legality of a regulation made by the Division of Health, Jefferson City, Missouri and concerning tourist cabins.

"As I understand it Section 315.250 R. S. Mo. 1949 empowers the Division of Health to make regulations for the proper cleanliness and sanitation of tourist camps etc. The regulation in question governs the type and length of vents for gas appliances, specifically a gas fired water heater. The present vent provided by tourist cabin owner extends about two to three feet above cabin roof, but under the regulations of the Division of Health, in this particular case, the vent needs to be extended a few feet. The Division of Health thinks their regulation is necessary because a shorter vent might constitute a fire hazard, and they say also it is a protection against down draft which could possibly send carbon monoxide poisonous fumes back through the vent and into the cabin.

"I would appreciate an opinion from your office as to whether this venting regulation made by the Division of Health is valid and enforceable."

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Section 315.250 RSMo 1949, referred to by you above, reads:

"The division of health may make such rules and regulations as it deems necessary for the proper cleanliness and sanitation of tourist camps, cabins or resorts and for the proper regulations of water supplies in connection therewith."

The above section confers upon the Division of Health the authority to enact regulations with reference to cleanliness, sanitation, and water supply. It would seem to be clear that if the Division has the authority to enact a regulation relating to the length of a vent of a gas heater that it must be upon the basis of their authorization to enact regulations regarding "sanitation" since this regulation obviously has nothing to do with water supply or cleanliness. Our problem then is to determine whether a grant of authority to the Division to enact regulations regarding sanitation is such a grant of authority as would embrace a regulation relating to the length of the vent of a gas heater.

In order to determine this matter we must of course attempt to determine how inclusive the word "sanitation" is.

Missouri cases on this point are very sparse. Indeed, we are able to find only one, an opinion rendered in 1883 by the Missouri Supreme Court in the case of Eyerman vs. Blaksley, 78 Missouri 145. In that case at l.c. 151 (4) the court stated:

"The word 'sanitary' embraces everything pertaining to the health of the inhabitants. ****"

In the California case of Huntington Laboratories vs. Onyx Oil & Chemical Company, 165 Federal 2nd 454, at l.c. 457 the Court of Customs and Patent Appeals stated that "sanitary" means of or pertaining to health. In the case of City of Wichita Falls vs. Robison, 46 S.W. 2d 965, the Supreme Court of Texas stated that the word "sanitary" had been defined as:

"Of or pertaining to health; designed to secure or preserve health; relating to the preservation or restoration of health; hygienic, as sanitary regulations, sanitary science."

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Corpus Juris Secundum, Volume 39, Page 811, Section 1, states:

"Sanitation is the devising and applying of measures for preserving and promoting public health; the removal or neutralization of elements injurious to health; the practical application of sanitary science."

In the case of State v. Fadely, 308 Pacific 2nd 537, at l.c. 548 (14-18) the Supreme Court of Kansas stated:

"****The term 'public health' is not susceptible to accurate definition since it takes on new definitions when new conditions arise, but generally speaking, it means the wholesome sanitary condition of the community at large. 39 C.J.S., Health, § 1, p. 811. Among all the objects sought to be secured by government, none is more important than the preservation of the public health; and, an imperative obligation rests upon the state through its proper instrumentalities or agencies to take all necessary steps to accomplish this objective (25 Am. Jur., Health, p. 287, § 3). Statutes enacted for this purpose should be liberally construed and the most extensive power may be conferred on administrative boards, either state or local, to carry out such purpose.****"

It is well known that the effect on a human being of exposure to gas fumes in an enclosed area may cause varying degrees of illness and even of death. Thus it is evident that such exposure is injurious to health. In the cases cited "sanitation" has been defined as being a preservation of the public health and as the removal of elements injurious to health, which is the object of the regulation in question. In view of these facts we believe that the regulation is within the power of the Division of Health to make.

CONCLUSION

It is the opinion of this department that the Division

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of Health is authorized to make a regulation with respect to the length of vents for gas heaters in a tourist cabin.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

HPW:mc